

Sakthi Engineering Works and anr. Vs. Sri Krishna Coir Rope Industry

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Court : Andhra Pradesh

Decided On : Dec-01-2005

Reported in : 2006(3)ALD119; 2006(3)ALT630

Judge : P.S. Narayana, J.

Acts : Consumer Protection Act; Limitation Act - Schedule - Articles 18 and 25; [Constitution of India](#) - Article 227; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 14, Rule 2 and 2(2); Code of Civil Procedure (CPC) (Amendment) Act, 1976

Appeal No. : CRP No. 6023 of 2005

Appellant : Sakthi Engineering Works and anr.

Respondent : Sri Krishna Coir Rope Industry

Advocate for Def. : Nagaraju Naguru, Adv.

Advocate for Pet/Ap. : Vardhineni Krishnamohan, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

P.S. Narayana, J.

1. The defendants in O.S. No. 29 of 2001 on the file of fl Additional District Judge, Kadapa at Produttur filed LA. No. 659 of 2004 under Order XIV Rule 2(2) of the Code of Civil Procedure (hereinafter in short referred to as 'the Code') praying the Court to try the issue relating to limitation as preliminary issue. The learned Judge by order dated 21-9-2005 dismissed the said application and aggrieved by the same, the petitioner in LA. No. 659 of 2004, the defendants in the suit in O.S. No. 29 of 2001 has preferred the present C.R.P., under Article 227 of the [Constitution of India](#).

2. Sri Vardineni Krishna Mohan, the learned Counsel representing the revision petitioners made the following submissions:

The learned Counsel had taken this Court through the language employed in Order XIV Rule 2 of the Code and would contend that even on the face of the allegations made in the plaint, the suit is clearly barred by time and hence, the question of limitation is to be tried as preliminary issue at least to avoid the wastage of valuable time of the Court. The learned Counsel also pointed out that even the National Consumer Disputes Redressal Commission, New Delhi while allowing the appeal and dismissing the complaint observed 'the complainant may seek other relief, in accordance with law and he can apply for exclusion of the period spent in prosecuting the case under Consumer Protection Act while computing period of limitation for institution of any suit or other proceedings.' The learned Counsel also would comment that even as per the averments made in the plaint no such application, in fact, had been moved and straightaway the suit was instituted and the suit was registered. The learned Counsel would contend that whether the plea of question of limitation is taken as a plea or not it is the duty of the Court to decide the said question. The learned Counsel also would maintain that the very registering of the suit is bad in law, even if the order of the National Consumer Disputes Redressal Commission is to be taken into consideration, in the light of the averments made in the plaint. Hence, the learned Counsel would maintain that it would be just and proper to direct this issue of question of limitation be tried as preliminary issue.

3. On the contrary Sri Bharati, the learned Counsel representing Nagaraju, the Counsel on record, made the following submissions:

The general rule is that all the issues are to be tried and directing a particular issue to be tried as preliminary issue always is an exception. The Counsel also would maintain that in the light of the submissions made in Paras 12 and 13 of the plaint and also in the light of the averments made in the written statement in this regard, adduction of evidence in relation thereto would be essential. Even otherwise, the Counsel would maintain that the question of limitation always necessarily cannot be said to be a pure question of law. It may be a mixed question of fact and law as well. The learned Counsel also would maintain that even otherwise it is within the discretion of the Court no doubt which may have to be exercised judiciously and in the light of the reasons recorded by the learned Judge inasmuch as the discretion was exercised in proper perspective, such discretionary order not be disturbed by this Court. The learned Counsel relied upon certain decisions to substantiate his contentions.

4. Heard the Counsel.

5. The respondent herein, the plaintiff in the suit filed the suit for recovery of amount on the strength of an implied contract said to have been concluded on 4-4-1992. From the facts it appears that respondent-plaintiff filed a complaint before the State Consumer Forum, Hyderabad in C.D. No. 5 of 1993 and the same was disposed of on 28-6-1995 granting relief of Rs. 3,07,632/- with interest and also certain other ancillary relief. The revision petitioners herein, the defendants in the suit carried the matter by way of appeal in First Appeal No. 415 of 1995 on the file of National Consumer Disputes Redressal Commission, New Delhi and the said appeal was allowed and the complaint made by respondent as plaintiff was dismissed. It was observed by the National Consumer Disputes Redressal Commission, New Delhi while allowing the appeal as hereunder:

We are also of the view that the appeal will have to be allowed. The order of the State Commission is set aside and the complaint is dismissed. The complainant may seek other relief in accordance with law and he can apply for exclusion of the period spent in prosecuting the case under the Consumer Protection Act while

computing the period of limitation for institution of any suit or other proceedings.

6. In view of the said observation referred to supra, the present suit in question had been straightaway instituted. The learned Judge recorded certain reasons and ultimately dismissed the application.

7. In *Rajam Extractions Ltd., Penubaka v. Nagaboyina Pakeeru* : 2004(5)ALD80 , this Court while dealing with the propriety of rejection of plaint at threshold despite clear averments relating to limitation held that the question of limitation being a mixed question of fact and law to be established by adducing necessary evidence at the trial. In *Khaja Quthubullah v. Government of Andhra Pradesh and Ors.* : AIR 1995 AP43 , the learned Judge of this Court while dealing with this aspect observed:

The bar of limitation has so many ingredients. If a party to the litigation sets up a contention that the suit is barred by limitation, the Court has first of all to examine (1) the cause of action in the suit, (2) when the cause of action commences, (3) when the parties act in a particular fashion as to fix the cause of action and (4) ultimately what is the result of flowing from such cause of action. Even while operating Articles 18 and 25 of the limitation Act, the Court was bound to examine as to when the parties stood at conditions to fulfil their obligations, and when the money became liable to be paid. These are questions of fact to be examined on the basis of the evidence produced by the parties in the case based on the pleadings. It is very clear from the pleadings in the suit that the parties have remained at issues on several matters. Particularly when the cause of action was specifically set up in the plaint which was challenged by the defendants in the written statement, it emanates many questions of fact which were in controversy the Court was bound to decide them based upon the evidence produced. The question of limitation would be a mixed question of law and fact. Under the circumstances, the question of limitation could not be decided as preliminary issue.

8. Strong reliance was placed on the decision of the Division Bench of this Court in *Majeti Venkateswarlu v. Pothuri Tulasidas and Anr.* : 2004(4)ALD543 , wherein the Division Bench held that on the basis of the allegations made in the plaint and the

written statement normally all issues should be decided while disposing of the suit and it is not proper to dispose of the suit on preliminary issue and issue of question of limitation cannot be decided as preliminary issue.

9. Reliance was also placed on the decision of Full Bench of Allahabad High Court in *Sunni Central Waqf Board and Ors. v. Gopal Singh Vishrad and Ors.* wherein the change of language by virtue of the Amending Act of 1976 introduced under Order XIV Rule 2 of the Code had been taken note of and it was held that in view of the same it is discretionary for the Court to decide issue of law as preliminary issue or to decide the same along with other issues.

10. In the light of the reasons recorded in detail by the learned Judge and also in view of the limitations imposed on this Court in exercising the supervisory jurisdiction under Article 227 of the [Constitution of India](#), this Court is of the considered opinion that such discretionary order of the Court below need not be disturbed. Accordingly, the C.R.P. shall stand dismissed at the stage of admission. No costs.